IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

THERA LAMBERT and AMY CONNOR, individually and on behalf of all others similarly situated,	)	**CLASS ACTION**
Plaintiffs,	)	**Case No.**
v.	)	**JURY TRIAL DEMANDED**
DOLLAR GENERAL CORPORATION,	)	
Defendant.	)	

CLASS ACTION COMPLAINT

Plaintiffs THERA LAMBERT and AMY CONNOR ("Plaintiffs"), individually and on behalf of all others similarly situated, through the undersigned attorneys, upon personal knowledge as to their own actions and status, and upon information and belief based upon the investigation of counsel as to the remaining allegations, allege as follows:

I. INTRODUCTION

1. This is a nationwide consumer class action brought by Plaintiffs on behalf of all individuals ("Class Members") who purchased Defendant's DG Body Soothing Aloe Gel (the "Product") for personal use and not for resale.

2. Dollar General Corporation ("Dollar General" or "Defendant") advertises, markets, sells, and distributes the Product. According to the Product's

ingredient label, it contains "Aloe Barbadensis Leaf Extract."

3. In reality, according to independent laboratory tests, ***Defendants' Product contain no actual Aloe Vera at all***.

4. The Product's label is false, deceptive and misleading, in violation of the Federal Food Drug & Cosmetics Act and its parallel state statutes, and almost every state warranty, consumer protection, and product labeling law in the United States.

II. PARTIES

5. During the relevant period, Plaintiffs and the other Class Members, in Illinois and throughout the United States, purchased the Product through numerous brick-and-mortar Dollar General retail locations and online through www.dollargeneral.com. Plaintiff and Class Members suffered an injury in fact caused by the false, fraudulent, unfair, deceptive, and misleading practices set forth in this Complaint.

6. Plaintiff Thera Lambert is a resident and citizen of Crete, Illinois. During 2015 and 2016, she purchased the Product at a Dollar General store near her home for her own use. Plaintiff Lambert and Class Members suffered an injury in fact caused by the false, fraudulent, unfair, deceptive and misleading practices set forth in this Complaint. Plaintiff Lambert and Class Members would not have purchased the Product had they known that it contains no Aloe Vera.

7. Plaintiff Amy Connor is a resident and citizen of Havana, Illinois. In June or July of 2016 she purchased the Product at a Dollar General store near her home for her own use. Plaintiff Connor and Class Members suffered an injury in fact caused by the false, fraudulent, unfair, deceptive and misleading practices set forth in this Complaint. Plaintiff Connor and Class Members would not have purchased the Product had they known that it contains no Aloe Vera.

8. Defendant Dollar General Corporation is incorporated in the State of Tennessee, with a principal place of business at 100 Mission Ridge, Goodlettsville, Tennessee 37072.

III. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over Plaintiff's class claims pursuant to 28 U.S.C. § 1332(d), because the combined claims of the proposed Class Members exceed $5,000,000 and because Defendant is a citizen of a different state than the named Plaintiffs and most Class Members.

10. This Court has personal jurisdiction over Defendant because Defendant regularly conducts business in this District.

11. Venue is proper in this District pursuant to: (1) 28 U.S.C. § 1391(b)(2), in that a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District; and (2) 28 U.S.C. § 1391(b)(3), in that Defendant is subject to personal jurisdiction in this District.

IV. FACTUAL ALLEGATIONS

12. Aloe Vera gel is made from an extract of the leaf of the Aloe Vera plant.

13. Aloe Vera is used in many products marketed as moisturizers for dry and irritated skin. It is also a popular folk remedy, believed by some to treat everything from hypertension to the common cold when ingested.

14. A 1999 study in the British Journal of General Practice found that consuming Aloe Vera may help lower cholesterol and reduce glucose levels.[1] Naturally, these findings sparked renewed interest in products containing Aloe Vera.

15. "The global market for Aloe Vera products is estimated to have reached $13 billion, according to information presented at a recent workshop held by the International Aloe Science Council."[2]

16. Defendant sells the Product in 6-ounce tubes and in 16-ounce bottles. The front labels of both the tube and the bottle clearly refer to the Product as an "Aloe" product:

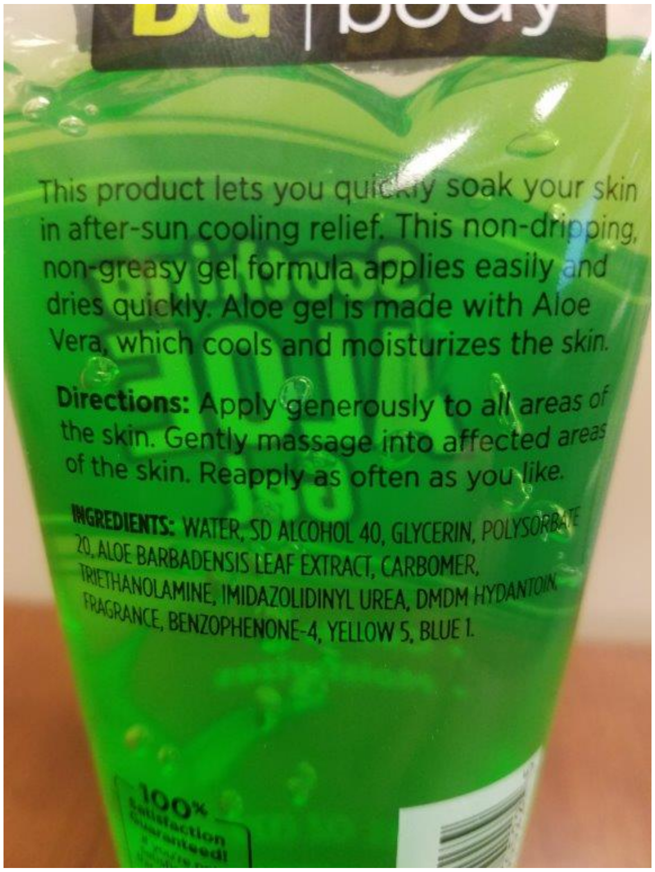
[1] http://www.aloevera-info.org/downloads/Study_AV_Clinical%20efficacy.pdf, *last accessed* June 9, 2016.

[2] http://www.nutraingredients-usa.com/Markets/Global-aloe-market-estimated-at-13-billion, *last accessed* June 9, 2016.

DG | body
Soothing
ALOE
Gel
• Cools
• Moisturizes
6 FL OZ (177 mL)

DG | body
Soothing
ALOE
Gel
• Cools
• Moisturizes
FL OZ (473 mL)

17. The ingredients list is identical for both the tube and the bottle, and it claims the Product contains "Aloe Barbadensis Leaf Extract":


This product lets you quickly soak your skin in after-sun cooling relief. This non-dripping, non-greasy gel formula applies easily and dries quickly. Aloe gel is made with Aloe Vera, which cools and moisturizes the skin.
Directions: Apply generously to all areas of the skin. Gently massage into affected areas of the skin. Reapply as often as you like.
INGREDIENTS: WATER, SD ALCOHOL 40, GLYCERIN, POLYSORBATE 20, ALOE BARBADENSIS LEAF EXTRACT, CARBOMER, TRIETHANOLAMINE, IMIDAZOLIDINYL UREA, DMDM HYDANTOIN, FRAGRANCE, BENZOPHENONE-4, YELLOW 5, BLUE 1.

Aloe Gel
This product lets you quickly soak your skin in after-sun cooling relief. This non-dripping, non-greasy gel formula applies easily and dries quickly. Aloe Gel is made with Aloe Vera, which cools and moisturizes the skin.
Directions: Apply generously to all areas of the skin. Gently massage into affected areas. Reapply as often as you like.
INGREDIENTS: WATER, SD ALCOHOL 40, GLYCERIN, POLYSORBATE 20, ALOE BARBADENSIS LEAF EXTRACT, CARBOMER, TRIETHANOLAMINE, IMIDAZOLIDINYL UREA, DMDM HYDANTOIN, FRAGRANCE, BENZOPHENONE-4, YELLOW 5, BLUE 1.

18. Plaintiffs' counsel had the Product tested, and the results showed that it does not contain any Acemannan, a key Aloe Vera chemical component.

19. According to the International Aloe Science Council ("IASC"), "[p]**roducts that do not contain Acemannan are not considered to be true aloe vera**."[3]

20. Other authoritative sources also consider Acemannan to be the main active ingredient in properly processed Aloe Vera inner leaf gel.[4] Improper manufacturing processes used by many Aloe Vera product manufacturers can produce products with little or no Acemannan. Currently, most manufacturers do not assay for Acemannan content in their final product.

21. Here, testing showed no Acemannan, meaning that the Product does not contain true Aloe Vera.

22. Based on these test results, Defendant's descriptions of its Product as containing "Aloe" or "Aloe Barbadensis Leaf Extract" are false, deceptive, and misleading.

23. The difference between the Product promised and the Product sold is significant. The lack of Aloe Vera and/or Acemannan in the Product diminishes its value to zero. Consumers, including Plaintiffs and Class Members, would not have purchased the Product had they known they contain no detectable amount of Aloe

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[3] http://www.iasc.org/Consumers/AloeVeraFAQ.aspx, *last accessed* June 9, 2016 (emphasis in original).

[4] *See* Johnson AR, White AC, McAnalley BH. Comparison of common topical agents for wound treatment: Cytotoxicity for human fibroblast in culture. *Wounds: a compendium of clinical research and practice*. 1989; (3): 186-192.

Vera.

24. At all relevant times, Defendant directed the above-referenced statements and claims, including its claim that the Product contains Aloe Vera, to consumers in general and Class Members in particular, as evidenced by their eventual purchases of the Product.

25. The listing of "Aloe Barbadensis Leaf Extract" is improper and misleading, as is the claim that the Product is "aloe gel" at all, in that the Product ***contain no Aloe Vera or Acemannan***.

26. Defendant developed and knowingly employs a marketing strategy designed to deceive consumers.

27. The purpose of this scheme is to stimulate sales and enhance Defendant's profits.

28. Plaintiffs and the other Class Members were in fact misled by Defendant's representations and marketing of its Product.

29. The absence of Aloe Vera leaves no reason to purchase the Product at all, since other proven and less-expensive products exist.

30. The Product is defined as a "cosmetic" under 21 U.S.C.S. § 321(i).

31. Defendant's deceptive statements violate 21 U.S.C.S. § 362(a), which deems a cosmetic product misbranded when the label contains a statement that is "false or misleading in any particular."

32. The FDA promulgated regulations for compliance with the Food Drug & Cosmetics Act ("FDCA") at 21 C.F.R. §§ 701 *et seq*. (for cosmetics).

33. Defendant's Product is misbranded under 21 C.F.R. § 701.1(b), which deems cosmetics misbranded when "[t]he labeling of a cosmetic which contains two or more ingredients [is designated] in such labeling by a name which includes or suggests the name of one or more but not all such ingredients." This is deemed misbranding "even though the names of all such ingredients are stated elsewhere in the labeling."

34. "Aloe Barbadensis Leaf Extract" is listed fifth of thirteen ingredients on the Product's back label. 21 C.F.R. § 701.3(a) requires "[t]he label on each package of a cosmetic [to] bear the name of each ingredient in descending order of predominance …" It is impossible that "Aloe Barbadensis Leaf Extract" could be the fifth most predominant ingredient in the Product, since the Product contains none of the chemical markers of Aloe Vera. The labeling is thus a violation of § 701.3(a).

35. 21 C.F.R. § 701.3(c)(2)(i)(b) also requires all Carbomer compounds in cosmetics to be identified by their specific type, *e.g.*, Carbomer 934, 934P, 940, 941, 960, or 961. Defendant's labels violate this standard and merely list the ingredient "Carbomer."

36. The introduction of misbranded cosmetics into interstate commerce is prohibited under the FDCA and all parallel state statutes cited in this Complaint.

37. Plaintiffs and the other Class Members would not have purchased the Product had they known that it does not contain Aloe Vera, or had they known about Defendant's scheme to sell the Product as misbranded cosmetics.

V. CLASS ACTION ALLEGATIONS

38. Plaintiffs bring this action individually and as representatives of all others similarly situated, pursuant to Federal Rule of Civil Procedure 23, on behalf of the below-defined Classes:

> **National Class:** All persons in the United States who, within four (4) years of the filing of this Complaint, purchased the Product.
>
> **Consumer Fraud Multi-State Class:** All persons in the States of California, Florida, Illinois, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, Rhode Island, and Wisconsin who, within four (4) years of the filing of this Complaint, purchased the Product.[5]

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[5] The Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS 505/1, et seq., prohibits both unfair and deceptive business acts and practices on the part of entities conducting business with consumers within the State of Illinois. The remaining 49 states and the District of Columbia have similar statutes: Alabama (Ala. Code 1975, § 8-19-1, *et seq.*); Alaska (AS § 45.50.471, *et seq.*); Arizona (A.R.S §§ 44-1521, *et seq.*); Arkansas (Ark. Code §§ 4-88-101, *et seq.*); California (Bus. & Prof. Code §§ 17200, *et seq*. and 17500 *et seq.*); Colorado (C.R.S.A. § 6-1-101, *et seq.*); Connecticut C.G.S.A. § 42-110, *et seq.*); Delaware (6 Del. C. § 2513, *et seq.*); District of Columbia (DC Code § 28-3901, *et seq.*); Florida (FSA § 501.201, *et seq.*); Georgia (OCGA § 10-1-390, *et seq.*); Hawaii (H.R.S. § 480-1, *et seq.*); Idaho (I.C. § 48-601, *et seq.*); Indiana (IN ST § 24-5-0.S-2, *et seq.*); Iowa (Iowa Code Ann.§ 714H.1, *et seq.*); Kansas (K.S.A. § 50-623, *et seq.*); Kentucky (KRS 367.110, *et seq.*); Louisiana (LSA-R.S. 51:1401, *et seq.*); Maine (5 M.R.S.A. § 205-A, *et seq.*); Maryland (MD Code, Commercial Law, § 13-301, *et seq.*); Massachusetts (M.O.L.A. 93A, *et seq.*); Michigan (M.C.L.A. 445.901, *et seq.*); Minnesota (Minn. Stat. § 325F.68,*et seq.*); Mississippi (Miss. Code Ann. § 75-24-1, *et seq.*); Missouri (V.A.M.S. § 407, *et seq.*); Montana (Mont. Code Ann. § 30-14-101, *et seq.*); Nebraska (Neb. Rev. St. §§ 59-1601, *et seq.*); Nevada (N.R.S. 41.600, *et seq.*); New Hampshire (N.H. Rev. Stat. § 358-A:1, *et seq.*); New Jersey (N.J.S.A. 56:8, *et seq.*); New Mexico (N.M.S.A. §§ 570012-1, *et seq.*); New York (N.Y. GBL (McKinney) § 349, *et seq.*); North Carolina (N.C. Gen Stat. § 75-1.l, *et seq.*); North Dakota (N.D. Cent. Code Chapter 51-15, *et seq.*); Ohio (R.C. 1345.01, *et seq.*); Oklahoma (15 O.S.2001, §§ 751, *et seq.*); Oregon (ORS 646.605, *et seq.*); Pennsylvania (73 P.S. § 201-1, *et seq.*); Rhode Island (G.L. 1956 § 6-13.1-5.2(8), *et seq.*); South Carolina (SC Code 1976, §§ 39-5-10, *et seq.*); South Dakota (SDCL § 37-24-1, *et seq.*); Tennessee (T.C.A. § 47-18-

> **Illinois Subclass:** All persons in the State of Illinois who, within four (4) years of the filing of this Complaint, purchased the Product.

Excluded from the Classes are Defendant and its affiliates, parents, subsidiaries, employees, officers, agents, and directors. Also excluded are any judicial officers presiding over this matter and the members of their immediate families and judicial staff.

39. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

40. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the Classes are so numerous that their individual joinder herein is impracticable. On information and belief, Class Members number in the thousands to millions. The precise number of Class Members and their addresses are presently unknown to Plaintiffs, but may be ascertained from Defendant's books and records.

101, *et seq.*); Utah (UT ST § 13-11-1, *et seq.*); Vermont (9 V.S.A. § 2451, *et seq.*); Virginia (VA ST § 59.1-196, *et seq.*); Washington (RCWA 19.86.010, *et seq.*); West Virginia (W. Va. Code § 46A-1-101, *et seq.*); Wisconsin (WIS. STAT. § 100.18, *et seq.*); and Wyoming (WY ST § 40·12-101, *et seq.*). These statutes uniformly prohibit deceptive, unlawful, unfair, or fraudulent business acts or practices including using deception, fraud, false pretenses, false promises, false advertising, misrepresentation, or the concealment, suppression, or omission of any material fact. The States in the Consumer Fraud Multi-State Class are limited to those states with similar consumer fraud laws under the facts of this case as alleged herein: California; Florida; Illinois; Massachusetts; Michigan; Missouri; New Hampshire; New Jersey; New York; Rhode Island; and Wisconsin.

Class Members may be notified of the pendency of this action by mail, email, Internet postings, and/or publication.

41. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3).** Common questions of law and fact exist as to all Class Members and predominate over questions affecting only individual Class Members. Such common questions of law or fact include:

a. Whether the marketing, advertising, packaging, labeling, and other promotional materials for the Product are deceptive;

b. Whether Defendant's actions violate the state consumer fraud statutes invoked below;

c. Whether Defendant breached an express warranty to Plaintiffs and Class Members; and

d. Whether Defendant was unjustly enriched at the expense of Plaintiffs and Class Members.

42. Defendant engaged in a common course of conduct giving rise to the legal rights Plaintiffs seek to enforce, on behalf of themselves and the other Class Members. Similar or identical statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, pale in comparison, in both quality and quantity, to the numerous common questions that dominate this action.

43. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs' claims are typical of the claims of the other members of the Classes because, among other things, all Class Members were comparably injured through Defendant's

uniform misconduct described above. Further, there are no defenses available to Defendant that are unique to Plaintiffs or to any particular Class Members.

44. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).** Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the other Class Members they seek to represent; they have retained counsel competent and experienced in complex class action litigation; and they will prosecute this action vigorously. The Classes' interests will be fairly and adequately protected by Plaintiffs and the undersigned counsel.

45. **Insufficiency of Separate Actions – Federal Rule of Civil Procedure 23(b)(1).** Absent a representative class action, members of the Classes would continue to suffer the harm described herein, for which they would have no remedy. Even if separate actions could be brought by individual consumers, the resulting multiplicity of lawsuits would cause undue burden and expense for both the Court and the litigants, as well as create a risk of inconsistent rulings and adjudications that might be dispositive of the interests of similarly situated purchasers, substantially impeding their ability to protect their interests, while establishing incompatible standards of conduct for Defendant. The proposed Classes thus satisfy the requirements of Fed. R. Civ. P. 23(b)(1).

46. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).** Defendant has acted or refused to act on grounds generally applicable to

Plaintiffs and the other members of the Classes, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the members of the Classes as a whole.

47. **Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and the other members of the Classes are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for Class Members to individually seek redress for Defendant's wrongful conduct. Even if Class Members could afford individual litigation, the court system could not. Individualized litigation would create a potential for inconsistent or contradictory judgments, and increase the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

VI. CLAIMS ALLEGED

FIRST COUNT

Violation of State Consumer Protection Acts (On Behalf of the Consumer Fraud Multi-State Class)

48. Plaintiffs incorporate paragraphs 1 through 47 as if fully set forth herein.

49. Plaintiffs bring this claim against Defendant on behalf of themselves and the Consumer Fraud Multi-State Class (for purposes of this Count, the "Class").

50. The Consumer Protection Acts of the states in the Consumer Fraud Multi-State Class[6] prohibit the use of unfair or deceptive business practices in the conduct of trade or commerce.

51. Plaintiffs and the other members of the Class have standing to pursue a cause of action for violation of the Consumer Protection Acts of the states in the Consumer Fraud Multi-State Class because Plaintiffs and members of the Class have suffered an injury in fact and lost money as a result of Defendant's actions set forth herein.

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[6] California (Cal. Bus. & Prof. Code § 17200, *et seq*.); Florida (Fla. Stat. § 501.201, *et seq*.); Illinois (815 Ill. Comp. Stat. 505/1, *et seq*.); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq*.); Michigan (Mich. Comp. Laws § 445.901, *et seq*.); Missouri (Mo. Rev. Stat. 010, *et seq*.); New Hampshire (N.H.Rev.Stat. § 358-A:1, *et seq*.); New Jersey (N.J. Stat. § 56:8-1, *et seq*.); New York (N.Y. Gen. Bus. Law § 349, *et seq*.); Rhode Island (G.L.1956 § 6-13.1-5.2(8), *et seq*.); and Wisconsin (WIS. STAT. § 100.18, *et seq*.).

52. Defendant intended that Plaintiffs and each of the other members of the Class would rely upon its deceptive conduct, and a reasonable person would in fact be misled by this deceptive conduct.

53. As a result of Defendant's use or employment of unfair or deceptive acts and/or business practices, Plaintiffs and each of the other members of the have sustained damages in an amount to be proven at trial.

54. In addition, Defendant's conduct showed malice, motive, and a reckless disregard of the truth such that an award of punitive damages is appropriate.

SECOND COUNT

Breach of Express Warranty, 810 ILCS 5/2-313
(On Behalf of the National Class and the Illinois Subclass)

55. Plaintiffs incorporate paragraphs 1 through 47 as if fully set forth herein.

56. Plaintiffs bring this claim against Defendant on behalf of themselves, the National Class, and the Illinois Subclass (for purposes of this Count, the "Classes").

57. Plaintiffs and each member of the Classes formed a contract with Defendant upon purchasing the Product. The terms of the contract included the promises and affirmations of fact made by Defendant on the Product's packaging and through marketing and advertising, as described above. This labeling, marketing, and advertising constitute express warranties and became part of the basis

of the bargain, and are part of the standardized contract between Plaintiffs and the members of the Classes, on the one hand, and Defendant, on the other.

58. Plaintiffs and the members of the Classes performed all conditions precedent to Defendant's liability under this contract when they purchased the Product.

59. Defendant breached express warranties about the Product and their qualities because Defendant's statements about the Product were false and the Product does not conform to Defendant's affirmations and promises described above.

60. Plaintiffs and the members of the Classes would not have purchased the Product had they known their true nature, namely that it does not contain any Aloe Vera.

61. As a result of Defendant's breach of warranty, Plaintiffs and each member of the Classes has been damaged in an amount equal to the purchase price of the Product and any consequential damages resulting from their purchases.

THIRD COUNT

Breach of Implied Warranty, 810 ILCS 5/2-315
(On Behalf of the National Class and the Illinois Subclass)

62. Plaintiffs incorporate paragraphs 1 through 47 as if fully set forth herein.

63. Plaintiffs bring this claim against Defendant on behalf of themselves, the National Class, and the Illinois Subclass (for purposes of this Count, the "Classes").

64. Defendant knew and intended that the members of the Classes would be the ultimate consumers of the Product.

65. Defendant sold the Product into the stream of commerce, and Defendant is a merchant with respect to goods such as the Product at issue.

66. The Product was not merchantable at the time of sale, because they did not conform – nor could they have conformed – to Defendant's representations as alleged herein.

67. Plaintiffs and the other members of the Classes did not receive the benefit of their bargain in purchasing the Product.

68. Because of Defendant's breach of the implied warranty, Plaintiffs and the other members of the Classes were injured.

69. As a result of Defendant's breach, Plaintiffs and the other members of the Classes have sustained damages.

FOURTH COUNT

Unjust Enrichment
(In the Alternative to the Second and Third Counts, on Behalf of the National Class and the Illinois Subclass)

70. Plaintiffs incorporate paragraphs 1 through 47 as if fully set forth herein.

71. Plaintiffs bring this claim against Defendant on behalf of themselves, the National Class, and the Illinois Subclass (for purposes of this Count, the "Classes").

72. Plaintiffs and the other members of the Classes conferred benefits on Defendant by purchasing the Product.

73. Defendant has been unjustly enriched in retaining the revenues derived from the purchases of the Product by Plaintiffs and the other members of the Classes. Retention of those monies under these circumstances is unjust and inequitable because Defendant's labeling of the Product was misleading to consumers, which caused injuries to Plaintiffs and the other members of the Classes because they would have not purchased the Product had they known the true facts, that the Product contained no Aloe Vera.

74. Because Defendant's retention of the non-gratuitous benefits conferred on it by Plaintiffs and the other members of the Classes is unjust and inequitable,

Defendant must pay restitution to Plaintiffs and the other members of the Classes for its unjust enrichment, as ordered by the Court.

FIFTH COUNT

Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*
(In the Alternative to the First Count and on Behalf of the Illinois Subclass)

75. Plaintiffs incorporate paragraphs 1 through 47 as if fully set forth herein.

76. Plaintiffs bring this claim against Defendant on behalf of themselves and the Illinois Subclass.

77. Plaintiffs and the Illinois Subclass have standing to pursue a cause of action for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act (the "ICFA"), 815 ILCS 505/1, *et seq.*, because Plaintiffs and the members of the Illinois Subclass have suffered an injury in fact and lost money as a result of Defendant's actions as set forth herein.

78. The ICFA prohibits the use of unfair or deceptive business practices in the conduct of trade or commerce. The ICFA is to be liberally construed to effectuate its purpose.

79. The IFCA provides:

> § 2. Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent

> that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

815 ILCS 505/2.

80. Illinois has expressly adopted the federal food, drug, and cosmetic labeling requirements as its own: "[a] federal regulation automatically adopted pursuant to this Act takes effect in this State on the date it becomes effective as a Federal regulation." 410 ILCS 620/21. Thus, a violation of federal food, drug and cosmetic labeling laws is also an independent violation of Illinois law and actionable as such.

81. Pursuant to 410 ILCS 620/19, which mirrors 21 U.S.C. § 362(a), "[a] cosmetic is misbranded – (a) If its labeling is false or misleading in any particular."

82. Defendant intended that Plaintiffs and each of the other members of the Illinois Subclass would rely upon Defendant's deceptive conduct, and a reasonable person would in fact be misled by this deceptive conduct.

83. Defendant knew or should have known that its representations of fact concerning the Product are material and likely to mislead consumers.

84. Defendant's practices, acts, and course of conduct in marketing and selling the Product are likely to mislead a reasonable consumer acting reasonably under the circumstances to his or her detriment. Like Plaintiffs, members of the

Illinois Subclass would not have purchased the Product had they known that they contain no actual Aloe Vera.

85. Plaintiffs and members of the Illinois Subclass have been directly and proximately damaged by Defendant's actions.

86. As a result of the Defendant's use or employment of unfair or deceptive acts or business practices, Plaintiffs and each of the other members of the Illinois Subclass have sustained damages in an amount to be proven at trial.

87. In addition, Defendant's conduct showed malice, motive, and a reckless disregard of the truth such that an award of punitive damages is appropriate.

VII. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of all claims in this Complaint so triable. Plaintiffs also respectfully request leave to amend this Complaint to conform to the evidence, if such amendment is needed for trial.

VIII. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Classes and Subclass proposed in this Complaint, respectfully request that the Court enter judgment as follows:

A. Declaring that this action is a proper class action, certifying the Classes and Subclass requested herein, designating Plaintiffs as Class Representatives and appointing the undersigned counsel as Class Counsel;

B. Ordering Defendant to pay actual damages to Plaintiffs and the other members of the Classes and Subclass;

C. Ordering Defendant to pay statutory damages, as provided by the applicable state consumer protection statutes, invoked above, to Plaintiffs and the other members of the Classes and Subclass;

D. Ordering Defendant to pay restitution to Plaintiffs and the other members of the Classes and Subclass;

E. Enjoining Defendant from engaging in the unlawful conduct set forth herein, as provided by the applicable state consumer protection statutes, invoked above;

F. Ordering Defendant to pay attorneys' fees and litigation costs;

G. Ordering Defendant to pay both pre- and post-judgment interest on any amounts awarded; and

H. Ordering such other and further relief as may be just and proper.

Dated: December 13, 2016

THERA LAMBERT and AMY CONNOR, individually and on behalf of all others similarly situated,

By: *\/s/ Jeffrey A. Berman*
One of the Attorneys for Plaintiffs
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